

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAKOTA STORM MORAN,
Minor.

LAURA TANCY THELMA EVANS and SCOTT
PHILIP EVANS,

UNPUBLISHED
September 28, 2004

Petitioners-Appellees,

v

JOHN FRANCIS MORAN,

Respondent-Appellant.

No. 253976
Oakland Circuit Court
Family Division
LC No. 03-679484-AY

Before: Borrello, P.J., and Murray and Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the termination of his parental rights to the minor child under MCL 710.51(6), the stepparent adoption provision of the Michigan Adoption Code. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first challenges the trial court's findings under MCL 710.51(6)(b), which considers the sufficiency of a parent's attempts to visit, contact, or communicate with the minor child. We review the trial court's findings for clear error. *In re Hill*, 221 Mich App 683, 691-692; 562 NW2d 254 (1997). A trial court may find that, although a parent's contacts were insufficient, the parent did not have the ability to contact the minor child because the other parent resisted the parent's attempted contacts. *In re ALZ*, 247 Mich App 264, 274; 636 NW2d 284 (2001).

Respondent argues that, despite his incarceration, he made numerous efforts to contact the minor child but such efforts were thwarted by petitioner Laura Evans, the minor child's mother. Respondent alleged that Evans returned two letters that respondent sent to the child, installed a privacy manager on her telephone, which effectively blocked respondent's calls, and prevented the child from having any contact with respondent's family. Respondent's testimony was contradicted by Evans' testimony that she never received any letters or cards sent by respondent to the child, although she did receive cards and gifts from respondent's family. This Court defers to the trial court's determination of credibility. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Although respondent tried to overcome many of the obstacles he

faced in contacting the child, there was clear and convincing evidence that he did not pursue written communication with the child in a regular and substantial fashion. See *In re Caldwell*, 228 Mich App 116, 120; 576 NW2d 724 (1998). Accordingly, the trial court did not clearly err in basing termination of his rights upon MCL 710.51(6)(b).

Respondent next argues that he was denied the effective assistance of counsel because his trial counsel failed to present evidence that his child support obligation had been abated during his incarceration to counter the petition's allegation that he failed to provide support or comply with a support order, MCL 710.51(6)(a). However, the evidence respondent proffers to this Court, an ex parte support credit order, was not obtained until after the petition to terminate respondent's parental rights was filed and, therefore, would not have affected the trial court's ruling that respondent failed to comply with his child support order for two or more years prior to the filing date of this petition.

Finally, respondent contends the trial court erred by failing to articulate its findings on each best interest factor set forth in MCL 710.22(f). However, no statutory or case law requires the trial court to make such an articulation. A review of the best interests evidence indicates that respondent was incarcerated for attempting to murder the child's mother. These criminal actions by respondent effectively destroyed the once loving relationship he enjoyed with the minor child who was now afraid of and angry with respondent. The trial court did not clearly err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood